IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20-4-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Petition No.578 of 2006
W.P.M.P.No.662, 663 of 2006

Dr.P.Sivanesan ... Petitioner

Vs.

1. The Secretary to Government,
Government of Tamil Nadu,
Health and Family Welfare Department,
Fort St.George,
Chennai - 600 009.

2. The Director of Public Health and Preventive Medicine,
Teynampet,
Chennai - 600 018.

3. The Commissioner,
Coimbatore Municipal Corporation,
Coimbatore. ... Respondents

This writ petition has been filed under Article 226 of Constitution of India, for issuance of a writ of certiorarified mandamus calling for the records relating to G.O.(Rt)No.1636, Health and Family Welfare (L2) Department dated 30.12.2005 on the file of the first respondent and quash its impugned G.O. dated 30.12.2005 and direct the first respondent to allow the petitioner to continue in the same post.

For Petitioner : Mr.R.S.Jeevarathnam
For Respondent 1&2 : Mr.Suresh Viswanathan,
Government Advocate
For 3rd Respondent : Mr.R.Sivakumar

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O R D E R

In this writ petition, petitioner seeks to quash the order of transfer in G.O.(Rt)No.1636, Health and Family Welfare (L2) Department, dated 30.12.2005, issued by the first respondent and to direct the first respondent to allow the petitioner to continue in the same post.

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2. The brief facts leading to filing of the writ petition, are as follows,

(a) Petitioner herein, after passing M.B.B.S., and M.D. (General Medicine) degrees, joined the Medical Services of the State Government as Assistant Surgeon and was initially posted at Cheyyar, North Arcot District. Petitioner was then posted as Medical Officer in the Primary Health Centre at Manakudayan, Trichy District. From 1989 to 1990 he served as District Health Officer at Virudhunagar; from 1991 to 1996 as Municipal Health Officer at Kodaikanal and in 1997 at Palani. From 1998 till May, 2005, he served as Municipal Health Officer, Didigul and in May, 2005, he was transferred from Dindigul and posted as Assistant Corporation Health Officer at Coimbatore.

(b) Petitioner states that after assuming charge as Assistant Corporation Health Officer at Coimbatore, he took concrete steps to remove unlicensed mutton and chicken shops and removed all the health hazards. He also educated the local residents about the dengue awareness and formed special task force teams to enlighten the public and in particular the slum dwellers. According to the petitioner, the third respondent appreciated the services of the petitioner and instructed to unearth the scandal of malarial insecticides purchase and usage. Petitioner was appointed as the Enquiry Officer in Swarna Jayanthi Roscar Yojana (Urban Self-Employment Scheme). There were also other complaints such as malpractices in the computer training and involvement of the Corporation Officers in other area at the relevant time.

(c) Petitioner further states that after enquiry, he unearthed the scandal of malarial insecticide purchase and usage and framed charges against one Chandrasekar, Field Assistant. Aggrieved against that, the said Chandrasekar motivated the malaria workers against the petitioner and lodged a false complaint under PCR Act on 16.12.2005, however, the said case was withdrawn on 17.12.2005. Petitioner gave a police complaint against the said Chandrasekar on 20.12.2005 for having given a false complaint against him and also completed the enquiry against Swarna Jayanthi Roscar Yojana and submitted his enquiry report to the third respondent on 5.12.2005. On the direction of the third respondent, petitioner preferred a complaint to the Police on 30.12.2005 and FIR was registered in Crime No.46 of 2005 on 30.12.2005 against Dr.N.Raghupathy, Civil Health Officer; N.Shanmugam, Junior Assistant, Coimbatore City Corporation; and M.Madhavan, Managing Director, TCPS Computer Training Institute. In the said complaint, criminal breach of trust, cheating and misappropriation to the tune of Rs.12 lakhs of the Corporation money are alleged. The said fact was reported in the local newspapers and therefore the higher officers of the Corporation and Politicians took all steps to shift the petitioner from the present place as he is treated as a hindrance in their day-to-day work.

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(d) According to the petitioner, due to the above reason, he was transferred by the impugned order from the post of Assistant City Health Officer (Health Officer Cadre), Coimbatore Corporation, and posted as Assistant Professor of Community Medicines, Tirunelveli Medical College, Tirunelveli in the vacancy arose due to the promotion of one Dr.Uma.

3. The learned counsel for the petitioner even though challenged the impugned order of transfer on various grounds, emphasised the point that the petitioner is not qualified to be posted as Assistant Professor of Community Medicines at Tirunelveli Medical College as per the Medical Institutions Regulations, 1998, which contemplate M.D. Degree in Community Medicine or a diploma in Public Health with three years of experience and therefore the impugned order of transfer is passed without considering the relevant materials viz., the Medical Institutions Regulations, 1998 and it shows the non-application of mind on mala fide intention to shift the petitioner from the present post. The learned counsel also produced the regulation, which is extracted hereunder,

Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998.

(PUBLISHED IN PART III, SECTION 4 OF THE GAZETTE OF INDIA DATED 5th DECEMBER, 1998)

1. Short title and commencement:

(1) These regulation may be called the "Minimum Qualification for Teachers in Medical Institutions Regulations, 1998"
(2) They shall come into force on the date of their publication in the Official Gazette.

2. Objectives:

Appointment of medical teacher, with minimum qualification and experience in various departments of medical colleges and institution imparting graduate and post-graduate medical education is a necessary requirement to maintain a standard of teaching.

3. Minimum qualification for appointment as a teacher:

Minimum qualification for appointment as a teacher in various departments of a medical college or institution imparting graduate and post-graduate education shall be as specified in the Schedules I and II annexed with these regulations.

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TABLE-1
REQUIREMENTS OF ACADEMIC QUALIFICATIONS, TEACHING AND RESEARCH EXPERIENCE.

C) Assistant Professor/ Lecturer	-do-	i. Requisite recognized post graduate qualification in the subject.	
		ii. Three years teaching experience in the subject in a recognised medical college as Resident/ Registrar/Demonstrator /Tutor.	

4. Respondents 1 and 2 have filed a counter affidavit and answered the said point in the following manner,

> "It is submitted that the Medical Council of India norms states that, only MD (Community Medicine) qualified candidates have to work in Community Medicine Department of Government Medical Colleges. But, due to dearth of hands in M.D.(Community Medicine) qualified candidates, non MD (Community Medicine) qualified candidates are also used to be posted in Community Medicine Department of Government Medical Colleges taking into consideration of the field experience gained by the individuals. This is the practice being followed for a long time. Hence, the transfer order issued to the petitioner (Non MD (Community Medicine)) qualified as Assistant Professor of Community Medicine, Tirunelveli Medical College is not illegal, abiniti, void and contrary to the rule of law. Further, it is submitted here that though he is not in possession of M.D.(Community Medicine) qualification, he is in possession of M.D. (General Medicine). Moreover, there is no ban in existence for posting a non-M.D.(Community Medicine candidate to Medical College as Assistant Professor of Social and Preventive Medicine."

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The learned Government Advocate submitted that though the Medical Institutions Regulations, 1998, prescribes qualification as stated supra, the practice being followed by the respondents 1 and 2 for a long time is to post a non-MD (Community Medicine) due to dearth of hands and therefore the order of transfer/posting the petitioner as Assistant Professor in Tirunelveli Medical College is in order.

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5. I have considered the rival submissions made by the learned counsel for the petitioner as well as the learned Government Advocate.

6. Though the learned counsel for the petitioner argued that because of the mala fide intention petitioner was shifted from Coimbatore to Tirunelveli Medical College, I am not going into the merits of the said contention.

7. A perusal of the Medical Institutions Regulations, 1998, which has prescribed minimum qualification for appointment of teachers in the Medical Colleges clearly establishes the fact that a person appointed in a department should possess the recognised post graduate qualification in the said subject and the Assistant Professor/Lecturer appointed must have three years teaching experience in the subject in a recognised medical college as Resident/Registrar/Demonstrator/Tutor.

8. Petitioner herein passed M.D.(General Medicine) and he do not possess M.D.(Community Medicine). He never worked as Demonstrator/ Registrar/Tutor/Resident in any Medical College at any point of time. Therefore he has no teaching experience at all, much less the required three years of teaching experience. Hence the action of the respondents in transferring the petitioner to a teaching post viz., Assistant Professor of Community Medicine at Tirunelveli Medical College, Tirunelveli, is unsustainable as it is contrary to the Medical Institutions Regulations, 1998, which the first respondent is bound to follow while appointing/transferring/posting Assistant Professors to the medical colleges. As rightly contended by the learned counsel for the petitioner, petitioner is not at all eligible to be posted in the said post due to lack of post graduation in the relevant subject and also due to want of minimum teaching experience.

9. The argument of the learned Government Advocate that due to want of candidates in the relevant subject the respondents are posting other P.G. degree holders, irrespective of the subjects as per the practice being followed for a long time, is unsustainable. The Honourable Supreme Court in the decision reported in (1978) 1 SCC 636 (M/s.Polestar Electronics (Pvt) Ltd. vs. Additional Commissioner, Sales Tax and Another), in paragraph 14 pointed out that wrong practice does not make the law. The same view is taken in the decision reported in (1995) 3 SCC 434 (Municipal Corporation for City of Pune and another v. Bharat Forge Co Ltd. and others). A Constitutional Bench of the Honourable Supreme Court in (1999) 7 SCC 120 (Dr.Preeti Srivastava and another v. State of M.P. and others) in para 57 held that the Medical Council regulations have a statutory force and are mandatory.

10. The Minimum Qualification for Teachers in Medical Institutions Regulation, 1998, is applicable to all medical institutions including the medical College at Tirunelveli, which is a Government Medical Institution. If no candidate is available in the Government service for the post of

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Assistant Professor in the Department of Community Medicine, it is open to the Government to recruit the qualified persons and post them in the relevant teaching subject. The Government itself should be a model to other private colleges while appointing teaching staff. The Government cannot bye-pass or violate the statutory regulations framed by the Medical Council of India and if the same is violated, I am afraid that the Medical Council of India may cancel the approval for the relevant course in the college. Therefore the contention raised by the respondents 1 and 2 in the counter affidavit and the argument advanced by the learned Government Advocate are liable to be rejected by taking note of the statutorily prescribed qualification framed by the Medical Council of India.

11. In view of the above finding I hold that the first respondent has passed the impugned order without any application of mind as the petitioner cannot be posted as Assistant Professor in the Tirunelveli Medical College. Consequently, the impugned order is liable to be set aside and accordingly set aside. The writ petition is allowed. No costs. Connected WPMPs are closed.

Vr

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. The Secretary to Government, Health &Family Welfare Department, Government of Tamil Nadu, Fort St.George, Chennai - 600 009.

2. The Director of Public Health and Preventive Medicine, Teynampet, Chennai - 600 018.

3. The Commissioner, Coimbatore Municipal Corporation, Coimbatore.

+ 1 CC to the Government Pleader SR NO 20524.
+ 1 CC To Mr.R.Sivakumar, Advocate, SR NO.20326.
+ 1 CC To Mr.R.S.Jeevarathnam, Advocate, SR NO.19909.

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RVL 26.04.2006

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